IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

QUAD INT'L, INC.,

Opposer

v.

ANDREA FISCHER,

Applicant.

Opposition No. 91/160,119 / 76516972

TTAB

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Applicant, ANDREA FISCHER ("Applicant"), by its attorney, hereby appeals, pursuant to Trademark Rule 2.145(a), to the United States Court of Appeals for the Federal Circuit from the final decision dated October 18, 2006 of the Trademark Trial and Appeal Board denying Applicant's Motion for Reconsideration and upholding the judgment entered against Applicant on August 3, 2006 in which registration of U.S. Trademark Serial No. 76/516,972 was refused.

Respectfully submitted,
GOODMAN LAW GROUP, PC

Dated: December 14, 2006

By: _____
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[redacted]

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT** was served by depositing one copy thereof in the United States Mail, first class postage prepaid, on December 15, 2006, addressed as follows:

Laura Fernandez
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100 Southeast Second Street, Suite 2100
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By: Elaine Clark
Elaine Clark

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: October 18, 2006

Opposition No. 91160119

Quad Int'l., Incorporated

v.

Andrea Fischer

Before Hohein, Holtzman and Zervas, Administrative Trademark Judges.

By the Board:

On November 22, 2005, the Board issued an order for applicant to show cause why judgment should not be entered against her in this proceeding in light of the judgment entered against her in related Opposition No. 91161452. Because applicant was unable to show good and sufficient cause to discharge the Board's November 22, 2005 order, the Board, on August 3, 2006, entered judgment against applicant in this proceeding.

This case now comes up on applicant's request for reconsideration of the Board's August 3, 2006 order in this proceeding. Opposer filed a response in opposition to such request.

Requests for reconsideration, as provided by Trademark Rule 2.127(b), are limited to the movant establishing that,

based on the information before the Board when the assertedly objectionable decision issued, the Board erred.

Applicant, in her request for reconsideration, merely reargues points already considered and decided by the Board. We will not grant a request for reconsideration simply because applicant disagrees with our prior decision.

Inasmuch as applicant has shown no error in the August 3, 2006 order, and because judgment against applicant remains in effect in Opposition No. 91161452,[1] applicant's request for reconsideration of the August 3, 2006 order in the instant proceeding is denied.

[1] The Board has denied applicant's request for reconsideration of the August 3, 2006 order issued in Opposition No. 91161452.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Greenbaum

Mailed: August 3, 2006

Opposition No. 91161452

Thomas Anderson

v.

Andrea Fischer

Before Hohein, Holtzman and Zervas, Administrative Trademark Judges.

By the Board:

This case now comes up on applicant's motion for relief from judgment under Fed. R. Civ. P. 60(b). The issue has been fully briefed, and we have considered applicant's reply. See Trademark Rule 2.127(a).

As background, following applicant's failure to respond to opposer's motion (filed March 23, 2005) for judgment on the pleadings,[1] and applicant's failure to respond to the Board's June 11, 2005 order to show cause, the Board's August 10, 2005 order (as modified on August 16, 2005) granted opposer's motion for judgment on the pleadings as conceded in view of applicant's apparent loss of interest in defending herself, and entered judgment against applicant.

[1] The Board suspended proceedings on April 5, 2005.

As a result, the subject application was refused, and now stands abandoned.

On January 12, 2006, new counsel for applicant filed the instant motion, alleging, in essence, that former counsel was negligent in failing to respond to the motion for judgment on the pleadings or the Board's June 11, 2005 show cause order, and that former counsel "abandoned" applicant with regard to this proceeding.[2]

Fed. R. Civ. P. 60(b) provides for relief from judgment on grounds of (1) "mistake, inadvertence, surprise, or excusable neglect," and (6) any other reason justifying relief from the operation of the judgment," and requires that any motion for such relief be made within a "reasonable time." Relief from final judgment is an extraordinary remedy to be granted only in exceptional circumstances. Moreover, where, as here, the adverse party has not consented to the motion for relief from final judgment, the moving party must show, preferably by affidavits, declarations or other documentary evidence, that the relief sought is warranted under Rule 60(b). The determination of whether a Rule 60(b) motion should be granted is a matter that lies within the sound discretion of the Board. See TBMP § 544 (2nd ed. rev. 2004) and cases cited therein.

[2] Applicant's involved application also is the subject of Opposition No. 91160119, brought by Quad Int'l Inc.

In this case, applicant filed her Rule 60(b) motion approximately five months after the Board entered judgment against applicant. Clearly, applicant filed the motion within a reasonable time.

Our inquiry therefore focuses on whether applicant's failure to respond to opposer's motion for judgment on the pleadings, or the Board's June 11, 2005 show cause order, was the result of excusable neglect, and whether applicant has sufficiently established "any other reason justifying relief from the operation of the judgment" as Fed. R. Civ. P. 60(b)(6) requires.

In Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, 507 U.S. 380 (1993), as discussed by the Board in Pumpkin, Ltd. v. The Seed Corps, 43 USPQ2d 1582 (TTAB 1997), the Supreme Court clarified the meaning and scope of "excusable neglect," as used in the Federal Rules of Civil Procedure and elsewhere, to impute to a party its counsel's acts or failures to act, thereby rendering irrelevant any distinction between neglect of counsel and neglect of the party.

In this vein, the Board has stated:

> [i]t is well settled that the client and the attorney share a duty to remain diligent in prosecuting or defending the client's case; that communication between the client and attorney is a two-way affair; and that action, inaction, or even neglect by the client's chosen attorney will not excuse the inattention of the client so as to yield the client another day in court.

CTRL Systems, Inc. v. Ultraphonics of North America, Inc., 52 USPQ2d 1300 (TTAB 1999)(citations omitted).

In the instant case, applicant's former counsel filed status inquiry letters, dated February 22, 2006 and May 8, 2006,[3] stating that opposer did not serve him with a copy of the motion for judgment on the pleadings, that he did not receive the Board's June 11, 2005 or August 10, 2005 orders, and that he only "recently" learned of the motion for judgment on the pleadings and the Board's June 11, 2005 and August 10, 2005 orders.

Notably, applicant's former counsel fails to state that he did not receive the Board's April 5, 2005 suspension order or the Board's August 16, 2005 order modifying the Board's August 10, 2005 order. In addition, the record includes a certified mail receipt for opposer's motion for judgment on the pleadings, signed by an individual at the former attorney's address. (See Opposer's Motion to Strike, dated May 22, 2006, pages 6-8). Furthermore, the United States Postal Service did not return as undeliverable former counsel's copies of the Board's April 5, 2005, June 11, 2005, August 10, 2005 or August 16, 2005 orders.

[3] These letters are the subjects of opposer's motions to strike (filed March 9, 2006 and May 22, 2006). Because these letters help to provide the Board with a fuller picture of the circumstances leading up to the instant motion, opposer's motions to strike are denied.

The fact that the four Board orders discussed above were mailed to applicant's former counsel at his correct address and in accordance with standard office procedure creates a presumption that those Board orders were received by him. See Jack Lenor Larsen Inc. v. Chas. O. Larson Co., 44 USPQ2d 1950 (TTAB 1997) (mere denial that orders mailed by the Board in accordance with standard procedures were not received insufficient to rebut the presumption of receipt.) Further, it appears that applicant's former counsel did, in fact, receive the Board orders dated April 5, 2005 and August 16, 2005, as well as opposer's motion for judgment on the pleadings.[4]

Applicant has failed to show that her inaction in this case was the result of unavoidable events or circumstances which could not have been prevented by reasonable diligence, nor has applicant persuaded the Board that the "catchall" provision of Fed. R. Civ. P. 60(b)(6) applies. See, e.g., Marriot Corp. v. Pappy's Enterprises, Inc., 192 USPQ 735 (TTAB 1976); Litton Business Systems, Inc. v. JG Furniture Co., Inc., 188 USPQ 509 (TTAB 1976); and American Home

[4] Opposer's motion for sanctions against applicant for her former attorney's alleged misrepresentations about failing to receive the motion for judgment on the pleadings and other filings by opposer is denied as untimely with respect to the statements allegedly made when applicant's former attorney was representing applicant, and denied with respect to the other statements because applicant's former counsel no longer represented applicant when he allegedly made such statements.

Products Corp. v. David Kamenstein, Inc., 172 USPQ 376 (TTAB 1971).

In view thereof, applicant's motion for relief from final judgment is denied.